THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.25234 of 1997

Dated 26-02-2007

Between:
New India Assurance Company Ltd, Surya Towers, S.D. Road, Secunderabad rep. By its Regional Manager.

..... PETITIONER

AND

The Welfare Commissioner, A.P.Labour Welfare Board, RTC X Roads, Hyderabad.

.....RESPONDENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.25234 of 1997

O R D E R:

Pursuant to an order of the Division Bench of this Court in W.P.No.1265 of 1994, dated 24-06-1997, whereby the Division Bench directed the respondents to consider the petitioner's representation dated 02-07-1994, in the light of the decision of the Supreme Court in **C.V.Raman v. Management of Bank of India**[1], and dispose of the said representation within a period of two months from the date of receipt of a copy of the order, the sole respondent passed the impugned order dated 22-09-1997, wherein he held that the decision in **C.V.Raman**[1] did not apply to the case before him as it related to a case of disciplinary action covered under the A.P.Shops and Establishments Act, 1988. The respondent further held that the recovery order dated 24-06-2007 was good and that the petitioner was liable to pay the contribution with arrears till 31-12-1996.

Sri Vedula Srinivas, learned counsel for the petitioner, would place reliance on Section 2(4) of the Andhra Pradesh Labour Welfare Fund Act, 1987, which defines an 'establishment' to mean:

(i) a factory as defined in Section 2(m) of the Factories Act, 1948;

(ii) a motor transport undertaking as defined in the Motor Transport Workers Act, 1961;

(iii) any other establishment as defined in Section 2(10) of the Andhra Pradesh Shops and Establishments Act, 1966

> and includes a society registered under any law in force in the State relating to registration of societies, and a charitable or other trust, whether registered or not, which carries on any business or trade or any work in connection with or ancillary thereto and which employs or on any working day during the preceding twelve months employed twenty or more persons, but does not include an establishment, not being a factory, belonging to or under the control of the Central or any State Government.

Under clauses (i) to (iii) of Section 2(4) of the A.P.Labour Welfare Fund Act, factories, transport undertakings and other establishments come under the definition of 'establishment'. However, an 'establishment', not being a factory, belonging to or under the control of Central or State Government is specifically excluded from the definition of 'establishment' under clause (iii) of Section 2(4) of the Act. Learned counsel, in this context, would refer to Section 73(1)(b) of the A.P. Shops and Establishments Act, whereunder 'establishments' under the Central and State Governments are exempted from the provisions of the A.P.Shops and Establishments Act. Learned counsel would emphasise, in my view rightly so, that since a provision in *pari materia* arose for consideration in **C.V.Raman**[1], the provisions of the A.P. Labour Welfare Fund Act would also not apply to establishments under the control of the Central Government. In view of the law laid down by the Supreme Court in **C.V.Raman**[1], 'establishment' under the control of the Central Government would not come under the purview of the A.P. Labour Welfare Fund Act in view of the exclusionary provisions in clause (iii) of Section 2(4) of the said Act.

The question which, however, requires to be adjudicated is whether the petitioner is an establishment under the control of the

Central Government. While Sri Vedula Srinivas, learned counsel for the petitioner, would make submissions on merits to contend that the petitioner is an 'establishment' under the control of the Central Government, these are questions of fact, which are better examined by the respondent herein and not in summary proceedings under Article 226 of the Constitution of India.

While setting aside the impugned order dated 22-09-1997 and remanding the matter to the respondent herein for consideration afresh in accordance with law, I consider it appropriate to direct the respondent to examine the factual aspect whether the petitioner herein is an 'establishment' under the control of the Central Government. This exercise shall be completed, after putting the petitioner on notice and after giving it a reasonable opportunity of being heard, within a period of four months from the date of receipt of a copy of this order.

The Writ Petition is disposed of accordingly. No order as to costs.

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26-02-2007

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[1] 1988(3) SCC 105